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Complaint No. 2009-006055 )  
)  
BARTHOLOMEW DRUG COMPANY )  
d/b/a STONER DRUG )  
)  
Serve on: Michael Holley )  
Registered Agent )  
315 South Main Street )  
Rock Port, MO 64482 )

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**MISSOURI BOARD OF PHARMACY**  
**AND**  
**BARTHOLOMEW DRUG COMPANY D/B/A STONER DRUG**

Bartholomew Drug Company d/b/a Stoner Drug (“Licensee”) and the Missouri Board of Pharmacy (“Board”) enter into this Settlement Agreement for the purpose of resolving the question of whether Licensee’s license as a pharmacy, license no. 002402, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo Cum. Supp. 2009. The Board and Licensee jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2009.

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Licensee acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against it at the hearing; the right to present evidence on its behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against it; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Board.

Being aware of these rights provided to it by law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to it.

Licensee acknowledges that it has received a copy of documents that were the basis upon which the Board determined there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license as a pharmacy, license no. 002402, is subject to disciplinary action by the

Board in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 338, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against it based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

**I.**  
**Joint Stipulation of Facts and Conclusions of Law**

Based upon the foregoing, the Board and Licensee herein jointly stipulate to the following:

1. The Board is an agency of the state of Missouri created and established by § 338.110, RSMo 2000, for the purpose of administering and enforcing the provisions of Chapter 338, RSMo, as amended.
2. Licensee is registered with the Missouri Secretary of State, corporation no. 00129019.
3. Licensee's place of business, referenced herein, is located at 315 S. Main St., Rock Port, Missouri.
4. Licensee is currently licensed by the Board as a pharmacy, license no. 002402.

5. Licensee's pharmacy license is current and active and was at all times relevant herein.

6. At all times relevant herein, Licensee employed pharmacist-in-charge William M. Holley ("Holley"), staff pharmacist Christopher J. Roup ("Roup"), and pharmacy technician Debbie Lutz ("Lutz").

7. On or about November 5, 2009, Board inspector Tom Glenski, R.Ph. ("Glenski") entered Licensee's place of business and observed Lutz dispensing prescriptions to two different customers, the first at 12:46 PM and the second at 12:52 PM. No pharmacist was present.

8. Shortly after 1 PM, Glenski met with Roup and Holley and informed them that pharmacy regulation prohibits the selling of any prescription while the pharmacist is not present.

9. On or about November 9, 2009, Holley faxed a letter to Glenski to inform him that he had conducted a staff meeting that same day and had stressed that no prescriptions may be dispensed unless a pharmacist is present. Roup and Lutz were both present at the meeting.

10. On or about December 11, 2009, at approximately 8:25 AM, Roup authorized Lutz, by telephone, to dispense a prescription to an undercover Board investigator named Kevan Lager. No pharmacist was present.

11. The role of a “pharmacy technician” is defined in 20 CSR 2220-2.700.1, which provides in part:

(1) A pharmacy technician is defined as any person who assumes a supportive role under the direct supervision and responsibility of a pharmacist and who is utilized according to written standards of the employer or the pharmacist-in-charge to perform routine functions that do not require the use of professional judgement in connection with the receiving, preparing, compounding, distribution, or dispensing of medications.

12. By permitting a pharmacy technician to dispense prescriptions when no licensed pharmacist was present, Licensee permitted an unlicensed individual to engage in the “practice of pharmacy,” in violation of Section 338.010, RSMo 2000, which provides in relevant part:

The “practice of pharmacy” means the interpretation, implementation, and evaluation of medical prescription orders, including receipt, transmission, or handling of such orders or facilitating the dispensing of such orders

....

No person shall engage in the practice of pharmacy unless it is licensed under the provisions of this chapter.

13. Licensee’s conduct constitutes a violation set forth in 20 CSR 2220-2.010(1)(A) and (B), which provides in part:

(1) The word medicine or medicines is a word similar or of like import to the words pharmacist, pharmacy, apothecary shop, chemist shop, drug store, druggist and drugs, and no person shall carry on, conduct or transact a business under a name which contains, as part of the name, the word medicine or medicines, unless the place of business is supervised by a licensed pharmacist.

(A) At all times when prescriptions are compounded in a pharmacy or other establishments holding a Missouri pharmacy permit, there shall be on duty and present in that place of business a pharmacist licensed in Missouri as provided by law. In any Class J: Shared Service pharmacy where a permit is maintained at a location for the purpose of remote dispensing as defined in 20 CSR 2220-2.900 the pharmacist may be considered on duty and present as long as all required electronic connection requirements are maintained and the pharmacist is accessible at all times to respond to patient's or other health professionals' inquiries or requests pertaining to drugs dispensed through the use of the automated pharmacy system. When there is no pharmacist on duty, no prescription will be compounded, dispensed or otherwise provided and the public will be advised that no pharmacist is on duty by means of signs stating this fact. The signs will be displayed prominently on the doors of all entrances and the prescription counter of the pharmacy and the signs will be composed of letters of a minimum height of two inches (2").

(B) Whenever, in a pharmacy or other establishment holding a Missouri pharmacy permit, a person other than a licensed pharmacist does compound, dispense or in any way provide any drug, medicine or poison pursuant to a lawful prescription, a licensed pharmacist must be physically present within the confines of the dispensing area, able to render immediate assistance and able to determine and correct any errors in the compounding, preparation or labeling of that drug, medicine or poison before the drug, medicine or poison is dispensed or sold. In any Class J: Shared Service pharmacy where a permit is maintained at a location for the purpose of remote dispensing as defined in 20 CSR 2220-2.900 the pharmacist may be considered on duty and present as long as all required electronic connection requirements are maintained and the pharmacist is accessible at all times to respond to patient's or other health professionals' inquiries or requests pertaining to drugs dispensed through the use of the automated pharmacy system. The pharmacist personally shall inspect and verify the accuracy of the contents of, and the label after it is affixed to, any

prescribed drug, medicine or poison compounded or dispensed by a person other than a licensed pharmacist.

14. Licensee's aforementioned conduct constitutes a violation set forth in 20 CSR 2220-2.700.1, which provides in part:

(1) A pharmacy technician is defined as any person who assumes a supportive role under the direct supervision and responsibility of a pharmacist and who is utilized according to written standards of the employer or the pharmacist-in-charge to perform routine functions that do not require the use of professional judgement in connection with the receiving, preparing, compounding, distribution, or dispensing of medications.

15. As the permit holder, Licensee is subject to discipline for violations of pharmacy law or rules under 20 CSR 2220-2.010(1)(O), which provides in part:

(O) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

16. As the permit holder, Licensee is liable for violations of Chapter 338, RSMo, or other relevant law that occur in connection with the dispensing of prescriptions or drugs under Section 338.210.5, RSMo, which provides in part:

5. If a violation of this chapter or other relevant law occurs in connection with or adjunct to the preparation or dispensing of a prescription or drug order, any permit holder or pharmacist-in-charge at any facility participating in the preparation, dispensing, or distribution of a prescription or drug order may be deemed liable for such violation.

17. Based on the facts and violations set forth above, cause exists for the Board to take disciplinary action against Licensee's pharmacy license pursuant to Section 338.055.2(5),(6),(10), and (13) RSMo Supp. 2009, which provides in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered its or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

....

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

....

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice under this chapter;

....

(13) Violation of any professional trust or confidence[.]

**II.**  
**Joint Agreed Disciplinary Order**

18. Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Cum. Supp. 2009.

19. Licensee's license as a licensed pharmacy, license no. 002402 is hereby **PUBLICLY CENSURED.**

20. The Board will maintain this settlement agreement as an open and public record of the Board as provided in Chapters 338, 610, and 620, RSMo. The Board will report this settlement agreement to data banks, other appropriate entities and in its newsletter. This is a disciplinary action against Licensee's license. The original of this document shall be kept in the Board's file and its contents shall be disclosed to the public upon proper request.

21. Licensee, together with its partners, shareholders, officers, directors, assigns, agents, employees, representatives and its attorney(s), do hereby waive, release, acquit, and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this

case, its settlement, or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof void or unenforceable.

22. Licensee understands that it may, either at the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit its request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

23. If Licensee requests review, this settlement agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the settlement agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement goes in to effect fifteen (15) days after the document is signed by the Executive Director of the Board.

LICENSEE

Bartholomew Drug Company d/b/a Stoner  
Drug

**Authorized Representative of Licensee**

By signing below, I hereby certify that:

- 1) I am an owner, partner, corporate officer/director, or manager-in-charge of this license and;
- 2) I am authorized to sign this Settlement Agreement on the Licensee's behalf.

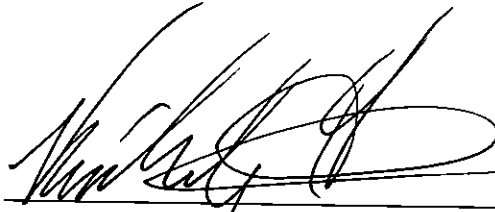
Sign: Wm. Michael Holley RPh

Print: William Michael Holley RPh

Title: Pharmacist in Charge

Date: 9-7-10

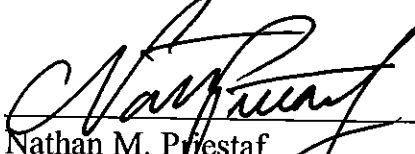
BOARD OF PHARMACY



Kim Grinston, Executive Director

Date: 9-28-10

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